

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, *et al. ex rel.*
STEVE CAMBURN

Plaintiffs,

v.

NOVARTIS PHARMACEUTICALS CORP.,

Defendant.

13 Civ. 3700 (RA)

**FILED
UNDER SEAL**

~~PROPOSED~~ UNSEALING ORDER

The United States (the “Government”) having now declined to intervene pursuant to the False Claims Act (the “FCA”), 31 U.S.C. § 3730(b)(4)(B), with respect to the *qui tam* claims raised in the Complaint filed by the relator in the above-captioned action; and the States of California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, Washington and Wisconsin, as well as the District of Columbia (collectively, the “Plaintiff States”) having similarly declined to intervene pursuant to their respective false claims acts or analogous statutes with respect to the relator’s *qui tam* claims.

IT IS HEREBY ORDERED THAT:

1. The *qui tam* Complaint shall be unsealed thirty days after entry of this Order; and, in the event that the relator has not voluntarily dismissed this action prior to that date, service of the *qui tam* Complaint upon the defendant by the relator is authorized as of that date.
2. Upon the entry of this Order, the Government is authorized to, in its discretion,

disclose to the defendant the existence of this *qui tam* action, the substance of the relator's *qui tam* claims, and the Government's decision to decline to intervene in this action.

3. Except for the *qui tam* Complaint, this Order, and the Government's Notice of Decision to Decline Intervention, all other contents of the Court's file in this action as of the date of this Order shall remain under seal and not be made public or served upon the defendant.

4. Upon the unsealing of the *qui tam* Complaint, the seal shall be lifted as to all matters occurring in this action subsequent to the date of this Order.

5. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the Government and the Plaintiff States; and the Government and the Plaintiff States may order any transcripts of depositions. Further, the Government and the States may seek at any time to intervene with respect to the allegations in the relator's *qui tam* Complaint (or any amended complaint), for good cause, or to seek dismissal of this action pursuant to 31 U.S.C. § 3630(e)(4) or analogous state statutes.

6. All further orders of this Court in this action shall be sent to the Government and the Plaintiff States by relator.

7. Should the relator or the defendant propose that the Complaint or any of its allegations be dismissed, settled, or otherwise discontinued, or that defendant be dismissed from the case, the moving party (or parties) must solicit the written consent of the Government and the Plaintiff States before applying for Court approval.

IT IS FURTHER ORDERED, WITH RESPECT TO THE CLAIMS ASSERTED BY
THE RELATOR ON BEHALF OF THE STATE OF MARY LAND, THAT:

1. All claims asserted on behalf of Maryland are hereby dismissed without prejudice.

Dated: July 1, 2017

SO ORDERED:



HON. RONNIE ABRAMS
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, *et al. ex rel.*
STEVE CAMBURN,

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NOVARTIS PHARMACEUTICALS CORP.,

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UNDER SEAL

**NOTICE OF ELECTION
TO DECLINE INTERVENTION**

Pursuant to the False Claims Act (the “FCA”), 31 U.S.C. § 3730(b)(4)(B), the United States (the “Government”) hereby notifies the Court of its decision not to intervene in this action. In addition, the States of California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, Washington and Wisconsin and the District of Columbia, which the *qui tam* relator named as co-plaintiffs (collectively, the “Plaintiff States”), also have decided not to intervene in this action.

Although the Government declines to intervene, I respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the Government; provided, however, that the “action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.” *Id.* Therefore, the Government requests that, should the relator or the defendant propose that this action be dismissed, settled, or otherwise discontinued, the Court require that such litigant(s) solicit the written consent of the Government before applying to the Court for such relief.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the Government requests that all pleadings and briefs filed in this action be served upon the Government. The Government also requests that the Court direct counsel for the *qui tam* relator to serve on the Government's counsel all orders issued by the Court. The Government reserves its right to order any deposition transcripts taken in this action. In addition, the Government reserves its right under the FCA to intervene at a later date in this action for good cause and, pursuant to 31 U.S.C. § 3730(e)(4), to seek the dismissal of any or all the relator's claims. Finally, the Government requests that it be served with all notices of appeal.

With the exception of Maryland, the Plaintiff States, pursuant to their respective False Claims Act or analogous state laws: (1) reserve their right to intervene at a later date upon a showing of good cause, *see, e.g.*, N.Y. Fin. L. § 190(5)(a); (2) request that all pleadings filed in this action be served upon counsel for the Plaintiff States, *see, e.g., id.* § 190(2)(f); (3) request the Court direct the relator's counsel to serve upon the Plaintiff States any orders issued by the Court, *see, e.g., id.*; (4) reserve their right to order any deposition transcripts in this action; and (5) request that if the relator or the defendant proposes that any claims be dismissed, settled or otherwise discontinued, the Court require that such litigant(s) solicit the written consent of the Plaintiff States before applying to the Court for such relief, *see, e.g.*, N.Y. Fin. L. § 190(5)(a).

With respect to Maryland, the Maryland False Health Claims Act provides that, if Maryland "does not elect to intervene and proceed with the action ... before unsealing the complaint, the court shall dismiss the action." Md. Code Ann., Health Gen. § 2-604(a)(7).

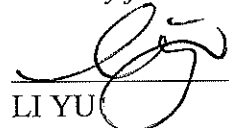
Accordingly, Maryland requests that all claims asserted by the relator on behalf of Maryland be dismissed without prejudice.

Dated: New York, NY
August 31, 2017

Respectfully submitted,

JOON H. KIM
Acting United States Attorney
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By: _____


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